IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.Nos.20267/2004 & 13613/2005
&
WVMP Nos.1738/2004, 2605/2005, & W.P.M.P.Nos.24397/2004

V.Punniakoti ... Petitioner in WP.20267/2004

C.Munusamy ... Petitioner in WP.13613/2005

Vs.

1.Special Commissioner and
Commissioner of Revenue Administration,
Chennai-5.

2.The District Collector,
Nagapattinam District,
Nagapattinam.

3.Ravichandran,
Assistant, Taluk Office,
Nagapattinam. .... Respondents 1 to 3 in WP.20267/2004 & respondents in WP.13613/2005

4.S.Nirmala
5.R.Muthukumarasamy
6.J.Vaidyanathan
7.K.Gopalan
8.N.Kannan
(R4 to R8 impleaded as per order of the Court dt.21.4.2005 by NKJ in WPMp.32763/2004) ... Respondents 4 to 8 in WP.20267/2004

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the order passed by the first respondent in proceedings No.Pani 3(3)/54903/2003 dated 16.6.2004 and quash the same

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For petitioners in both WPs : Mr.T.Sellapandian
For R.1 & R.2 in -do- : Mr.A.Edwin Prabhakar, G.A.(writs)
For R.3 in -do- : No appearance
For R4 to R8 in WP 20267 : Mr.P.Rajendran

COMMON ORDER

The above writ petitions have been filed praying to issue Writs of Certiorari to call for the records relating to the order passed by the first respondent in No.Pani 3(3)/54903/2003 dated 16.06.2004 and quash the same insofar as the petitioners are concerned.

2. The case of the petitioners is that they were appointed as Junior Assistants on 14.11.1984 and 15.10.1984 respectively and they were promoted as Assistants on 04.12.1992. They acquired all the requisite qualifications for being promoted as Deputy Tahsildar, which is the next avenue of promotion. While drawing panel every year for the post of Deputy Tahsildar, there were no qualified hands in the Scheduled Caste category and as a result of the same, the panel was not having adequate number of candidates from the Schedules Caste. Thus there are backlog vacancies every year. The Government of India directed all the State Governments to fill up the backlog vacancies without allowing the Scheduled Caste vacancies to lapse. As per the above direction, for the year, 1999, panel was drawn for promotion to the post of Deputy Tahsildar and in that panel, the names of the petitioners were included and promoted as Deputy Tahsildars.

3. The further case of the petitioners is that as against the regular promotion, an appeal seems to have been filed by the third respondent and 11 others and without giving notice, the first respondent by an order dated 16.06.2004, cancelled the panel drawn, without giving any opportunity to them and directed to draw panel for the years 1997, 1998 and 1999. Aggrieved by the same, the petitioners have filed the present writ petitions.

4.The first respondent has filed counter and contended that Rules and Regulations laid down by the Government in Personnel and Administrative Reforms Department from time to time with regard to the approval of vacancies are followed by the first respondent; that the Nagapattinam District was bifurcated from the erstwhile Thanjavur District on 18.10.1991 and Tiruvarur District was bifurcated from Nagapattinam District with effect from 01.01.1997. Since the inception of the Nagapattinam District, the Deputy Tahsildars lists for the years 1991 and 1992 have been drawn after getting the approval of vacancies by the first respondent as in the case of all Revenue Districts in the State. The crucial date for drawal of the Deputy Tahsildar list is 15th September every year. As per the guidelines issued in G.O.Ms.No.368 Personnel and

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Administrative Reforms Department dated 18.10.1993, the estimate of vacancy was worked out and ultimately, as no vacancy arose in the cadre of Deputy Tahsildar, 'Nil' lists were drawn by the District Collector, Nagapattinam as per the procedure in vogue for the years 1993, 1994, 1995 and 1996. At that stage, the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation Ltd., Nagapattinam, in his letter dated 11.1.1996, had informed that 104 posts of Deputy Tahsildars have been allotted to Revenue Unit and had requested to depute the staff for monopoly procurement operations of paddy of Samba '96 season. In order to meet out the exigency, with the concurrence of the first respondent, the second respondent has given only temporary promotion to the 31 qualified persons as Deputy Tahsildar during March 1996. As the seasonal posts of Deputy Tahsildar on deputations to Tamil Nadu Civil Service Corporation Limited were for short-term operations of procurement of paddy, these posts were disbanded on 31.03.1996. All the 66 persons, who were given temporary promotions as Deputy Tahsildars for about only 17 days from 15.03.1996 were reverted as Assistant on 31.03.1996.

5. Some of the petitioners, who were temporarily promoted as Deputy Tahsildars during March 1996 and subsequently reverted as Assistants, following the disbandment of these posts filed O.A.Nos.651 and 7575 of 1998 before the Tamil Nadu Administrative Tribunal. In the meantime, as per the instructions of the first respondent, lists were drawn with the persons fully qualified as on the crucial date of the respective panel years i.e. 15th September of the concerned year, following Rule 22(d) of the Tamil Nadu State and Subordinate Service Rules dealing with rule of reservation and temporary promotions were given during the years 1997, 1998 and 1999.

6. Even though regular vacancies arose during the years 1997 to 1999, owing to the pendency of the above mentioned O.As., no regular lists could be drawn by the second respondent and therefore, they could not be published during these years and the large number of Deputy Tahsildars, who were given temporary promotion for a very short period due to the seasonal requirement of Tamil Nadu Civil Supplies Corporation for procurement operations, could not be given "Police Training" and "Magisterial Training" and hence, the District Administration was not in a position to give further promotion to the abovesaid persons. The first respondent therefore accorded permission to publish the lists of Deputy Tahsildars for the years 1997, 1998 and 1999 subject to result of the O.As. Accordingly, regular lists of Deputy Tahsildars for those years were drawn by the second respondent and published on 09.05.2002.

7. Rule 4 of the Tamil Nadu State and Subordinate Services Rules, contemplates the preparation of a panel every year. In view of the above facts, the action of the second respondent in carrying over the backlog vacancies of 11 SC candidates and 1 ST candidate left

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unfilled during the year 1992 to the panel year 1997 and 1998 after a lapse of four recruitment years is not correct. Once the error committed by the second respondent comes to the notice of the first respondent, being the Appellate Authority, the first respondent has no other choice except to quash the panel drawn and issue directions to the second respondent to draw the panel in accordance with settled principles of law. Hence, the lists of Deputy Tahsildars drawn for the years 1997 to 1999 were rightly cancelled by the first respondent vide proceedings dated 16.06.2004. Aggrieved by the order, the petitioner is at liberty to seek remedy by preferring appeal before the first respondent and not by filing writ petition and seeks to dismiss the writ petition.

8. Respondents 4 to 8 have filed a counter affidavit along with the vacate stay petition and submitted that under Rule 4 of the Tamil Nadu State and Subordinate Services General Rules, 'all the panels prepared for a year and published in the Tamil Nadu Government Gazette is valid for a period of one year from the date of approval by the competent authority. If the estimate of vacancy for any particular year is nil, a "nil" list should also be published in the aforesaid manner'. Since the estimates of vacancies for the years 1993 to 1996 were nil, "nil" lists were published for the said years. Therefore, it is clear that the unfilled vacancies of the year 1992 cannot be carried forward to the year 1997. Therefore, the order passed by the Special Commissioner and Commissioner of Revenue Administration, Chennai, setting aside the panels drawn by the Collector, Nagapattinam for the years 1997 to 1999 by carrying forward the vacancies of the year 1992 is perfectly valid and in accordance with Rule 22(d) of the Tamil Nadu State and Subordinate Services (General) Rules and prayed for dismissal of the writ petition.

9. Heard Mr.T.Sellapandian, learned counsel appearing for the petitioners, Mr.A.Edwin Prabhakar, learned Government Advocate appearing for Respondents 1 and 2 and Mr.P.Rajendran, learned counsel appearing for the respondents 4 to 8.

10. The learned counsel for the petitioner has contended that the vacancies for consecutive three years have to be taken into account and they should be filled-up and only in case of non-availability of suitable reserved candidates, those vacancies could be de-reserved. The learned counsel further contended that before cancelling the order, the first respondent has not followed the guidelines framed in G.O.Ms.No.368 Personnel and Administrative Reforms, dated 18.10.1993.

11. On the other hand, the learned counsel for the respondents contended that the procedure for preparation of the panel was vague and 'nil' lists were published for the years 1993 to 1996 and therefore, unfilled vacancies of the year 1992 cannot be carried

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forward to the year 1997 and the action of the first respondent is perfectly valid and there is no reason to interfere with the action of the first respondent.

12. The learned Government Advocate also placed his submissions on the same lines that as cancellation is in accordance with the rules, there is no infirmity in the order passed by the first respondent.

13. I have given careful consideration to the submissions made by the learned counsel on either side.

14. The crucial point for consideration in this case is as to whether the unfilled vacancies of the year 1992 can be carried forward to the year 1997 and the order passed by the first respondent setting aside the panels issued by the Collector, Nagapattinam for the years 1997 to 1999 by carrying forward the vacancies of the year 1992 is perfectly valid and in accordance with Rule 22(d) of the Tamil Nadu State and Subordinate Services (General) Rules.

15. The provision of law, ruling the area i.e. Rule 22(d) of the Tamil Nadu State and Subordinate Services (General) Rules, reads as follows:

> "Rule 22(d): If qualified and suitable candidates belonging to any of the Backward Classes including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment, by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation.
>
> Provided that if qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them in the cycle, the turns so allotted to them shall not lapse and the number of candidates to be selected in that recruitment shall be reduced by the number of candidates belonging to Schedule Castes and Schedule Tribes not available for selection against the turn allotted to them; the unfilled vacancies reserved for the Schedule Castes and Schedule Tribes to be filled by recruitment by transfer or by promotion shall be carried over to the four consecutive recruitment years, namely, year of recruitment plus three subsequent recruitment years. The selection for appointment to the vacancies in the next recruitment shall be made first

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for the carried over turns and then the normal rotation shall be followed. If qualified and suitable candidates belonging to any of the Schedule Castes and Schedule Tribes are not available for selection for appointment by recruitment by transfer or by promotion even thereafter, the vacancies reserved for those categories shall first be dereserved by obtaining the orders of the Government before filling them by candidates in the next turns in the order of rotation.

Provided further that the normal number of vacancies reserved for the candidates belonging to the Schedule Castes and Schedule Tribes and the carried forward vacancies as specified in the first proviso shall not exceed fifty percent of the total number of vacancies for a particular recruitment. If there be two vacancies only, one of them shall be treated as a reserved vacancy. If there be one vacancy only, it shall be treated as unreserved. The surplus of the fifty percent shall be carried forward to the subsequent recruitment subject, however, to the condition that the particular vacancies carried forward do not become time barred due to their continued existence for more than three years. Selection for appointment to the oldest carried forward vacancies shall be made first.

Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the 1st April, 1989, there shall be a ban on dereservation of vacancies reserved for the candidates belonging to any of the Schedule Castes and Schedule Tribes, Most Backward Classes and Denotified Communities to be appointed by direct recruitment. But the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward classes and Denotified Communities) and therefore if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities) are not available for appointment, the turn, so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belong to any of the Schedule Castes and Schedule Tribes, Most Backward Classes and De-notified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then a second attempt shall be made for selection of the candidates belonging to the respective communities

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by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such vacancies. If the required number of candidates belonging to such communities are not available even then, the vacancies for which selection could not be made shall remain unfilled until the next recruitment year treating them as "backlog" vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year (called the current vacancies), the "backlog" vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the "backlog" vacancies as two distinct groups as illustrated in Schedule V to this part. While in respect of vacancies for the year of recruitment, the normal procedure relating to the calculation of vacancies reserved for the candidates belonging to such communities as well as the instructions that not more than fifty percent of the vacancies shall be reserved for Schedule Castes and Scheduled Tribes communities and physically handicapped shall apply, selection for appointment for all the "backlog" vacancies reserved for such communities shall be made by the candidates belonging to such communities without any restriction as they belong to distinct group of "backlog" vacancies. The selection for appointment in the next direct recruitment shall be made first for the "backlog" vacancies and then the normal rotation shall be followed:

Provided also that in exceptional cases for posts in Groups A and B for which suitable candidates belonging to the Scheduled Castes, Scheduled Tribes, Most Backward Classes or Denotified Communities are not available against the respective reserved vacancies and the non-filling up of posts causes hardship for running the administration, exemption from the ban shall be granted by the Government. The procedure for carrying forward of such vacancies and for exemption from this ban under this rule shall be as specified in Schedule V to these Rules"

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16. In support of his contentions, the learned counsel for the petitioners relied on a decision of the Supreme Court reported in 1994 supplementary (2) Supreme Court Cases 490 (HARISH CHANDRA RAM VS MUKH RAM DEBEY AND OTHERS), wherein, it has been held as follows:

"In view of the aforestated resolutions, it is clear that the general candidates will not be considered for

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promotion to the post for SC, ST or BC reserved candidates. The reserved candidates even if they are not available, it is settled law that unless d ereservation is done the vacancy will not be thrown open to the general category. It is not incumbent upon the Government as soon as the vacancy arises that it must be filled by recruiting the candidates either by direct recruitment or promotion from feeder cadre or by transfer. So, as and when recruitment takes place the cases of all the candidates including reserved candidates must be considered according to rules which would arise only when recruitment takes place. Take for instance an hypothetical case. A and B are eligible for consideration and were considered in 1980 for two vacancies and B was found suitable and was appointed to one vacancy in 1982. One more vacancy arose in 1983. In the year 1983, A, C and D were considered. A and D were promoted in 1984. The recruitment years are 1982 and 1984, and not 1980 when one vacancy existed or 1983 when two vacancies existed. So each year is not the year of recruitment. As and when recruitment takes place in a particular year, it would be the year of recruitment."

17. From a reading of the above Rule and the law laid down by the Supreme Court, it is clear that if the reserved candidates are not available, it is settled law that unless de-reservation is done, the vacancy will not be thrown open to the general category. It is not incumbent upon the Government as soon as the vacancy arises that it must be filled by recruiting the candidates either by direct recruitment or promotion from feeder cadre or by transfer. So, as and when recruitment takes place, the cases of all the candidates including reserved candidates must be considered according to Rules which would arise only when recruitment takes place. The decision of the Supreme Court, relied on by the petitioners, is directly answering the points raised in these writ petitions. It is held that the recruitment year means the year in which recruitment takes place, but not each three successive years in which the vacancy exists and it is to be considered for appointment or promotion. Therefore, in view of the settled legal proposition, the order of the first respondent is not correct and it is exfacie illegal and therefore, in my opinion, the first respondent has not applied his mind to properly appreciate the rules and to give a correct reasoning before cancelling the order of the second respondent. Therefore, there is a sound reason to

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interfere with the order of the first respondent. The order of the first respondent suffers from legal infirmities being not in accordance with law and accordingly, the order of the first respondent is set aside and both the writ petitions are allowed. No costs. Consequently, connected WVMPs and WAMPs are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.Special Commissioner and
Commissioner of Revenue Administration,
Chennai-5.

2.The District Collector,
Nagapattinam District,
Nagapattinam.

+2ccs to Mr.S.Mani, Advocate Sr 14805,14806
+1cc to Mr.P.Rajendran, Advocate Sr 14866
+2ccs to Govt. Pleader SR 15169,15170

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km/27.3.

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